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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,089	08/22/2003	Gary Crawford	GBHS126617	9601

26389 7590 04/16/2007
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SEATTLE, WA 98101-2347

EXAMINER

HOGAN, JAMES SEAN

ART UNIT	PAPER NUMBER
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3752

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/16/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/646,089

Applicant(s)

CRAWFORD, GARY

Examiner

James S. Hogan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the fans to propel the mist, the means by which intermittent misting can be performed, and the plurality of orifices and jets must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Response to Arguments

Applicant's arguments with respect to claims 2-16 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 11 recites the limitation "the coalesced droplets" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 9-16 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No 4,990,290 to Gill et al

As per claim 8, Gill et al teaches a tank (101) defining an interior space with an exhaust port, a first conduit (123) to capable of delivering bird repellent from the reservoir (sump (23)) to a nozzle orifice (121), the orifice located within the space of the housing, a second conduit (not numbered, but featuring a jet as defined as a nozzle conduit pressurized with air from a source), spaced apart from then orifice (See Figure 3) so that pressurized air can entrain solution from the reservoir out of the orifice and create a mist. As per claim 9, the pressurized air is sufficient to vaporize a repellent. As per claim 12, Gill et al teaches fans (69) to propel the mist. As per claim 11, droplets

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collected by the filter of Gill et al, fall back into the reservoir and can be collected by the first intake conduit (123). As per claim 12, Gill et al teaches fans (69) to propel the mist. As per claim 13, Gill et al discloses a plurality of jets (conduit prior to nozzle) and a plurality of orifices (nozzles (121) that correspond to each jet. As per claim 14, Gill et al teaches intermittent usage via a remote control (37 and 39). As per claim 15, pressurized air in the nozzle conduit of Gill et al passes over a surface of the orifice thereby reducing air pressure and drawing fluid from then reservoir.

As per claim 16, Gill provides clear anticipation of a device perfectly capable of dispersing bird repellant as a fog by disclosing an apparatus that comprises a tank (101) defining an interior space; capable of placing a quantity of bird repellant in liquid form within space of the tank, a nozzle assembly (121) in fluid communication with the interior space of the tank, at least one nozzle (121) including a discharge aperture, an air-pressurizing source (125) which is capable atomizing a portion of bird repellant by moving air over the discharge aperture of the at least one nozzle via the air-pressurizing source, thereby providing an atomized bird repellant, and filtering the atomized bird repellant through a filter member (105).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No 4,990,290 to Gill et al

As per claim 3, Gill provides clear teaching of a device perfectly capable of dispersing bird repellant as a fog by disclosing an apparatus that comprises a tank (101) defining an interior space; capable of placing a quantity of bird repellant in liquid form within space of the tank, a nozzle assembly (121) in fluid communication with the interior space of the tank, the at least one nozzle including a discharge aperture, an air-pressurizing source (125) which is capable atomizing a portion of bird repellant by moving air over the discharge aperture of the at least one nozzle via the air-pressurizing source, thereby providing an atomized bird repellant; and (as per claim 3) filtering the atomized bird repellant through a filter member (105). As per claim 2, the pressurized air is sufficient to vaporize a repellant. As per claim 5, Gill et al teaches fans (69) to propel the mist. As per claim 6, Gill et al discloses a plurality of jets (conduit prior to nozzle) and a plurality of orifices (nozzles (121)) that correspond to each jet. As per claim 7, Gill et al teaches intermittent usage via a remote control (37 and 39). As per claim 10, the basis for which is outlined in the rejection of claim 8 above, Gill lacks

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teaching the filtration of mist droplets to 20 microns in diameter. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have reached a droplet size of 20 microns in diameter, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. See *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Conclusion

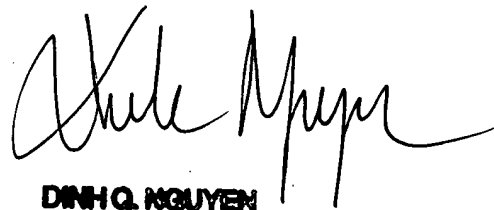
Any inquiry concerning this communication or earlier communications from the examiner should be directed to James S. Hogan whose telephone number is (571) 272-4902. The examiner can normally be reached on Mon-Fri, 7:00a-4:00p EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JSH
4/4/2007



DINH Q. NGUYEN
PRIMARY EXAMINER